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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,397

09/05/2003

Harry Herzog

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EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT

PAPER NUMBER

3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/656,397

Applicant(s)

HERZOG, HARRY

Examiner

Justin M. Larson

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-8, 10, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. (4,960,280) in view of Kristof (US 3,711,868 A).

Regarding claims 1, 5-7, and 10, Corder, Jr. discloses a support worn on a user's chest and limbs comprising: a buckle (D-ring); a first strap (A) having first and second ends (1&2), the first end (1) configured to pass through a first side of the buckle (the straight portion of the D-ring) and couple with VELCRO to the second end (2) to form an adjustable first loop; and a second strap (4) having a first end attached to the first strap at a point (7) in a middle region of the first strap, and a second end configured to pass through a second side of the buckle (the curved portion of the D-ring) and couple with VELCRO to itself to form a second loop (figure 3); and a series of stitches coupling a first end of the second loop to the first loop (col. 3 lines 37-40). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Corder, Jr. which is capable of being used in the intended manner, i.e., with a power landscaping tool. There is no structure in Corder, Jr. that would prohibit such functional intended use (see MPEP 2111).

Corder, Jr. fails to disclose the first strap (A) having an elastomeric gripping surface comprising a plurality of elastomeric threads interwoven into a non-elastomeric material. Kristof, however, teaches that elastomeric threads (17) can be interwoven into a strap or band as shown in Figure 1 in order to provide a surface of the strap with anti-slip means (col. 1 lines 44-61). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include interwoven elastomeric threads on the strap of Corder, Jr., as taught by Kristof, in order to provide the strap with an anti-slip means that would prevent the strap from inadvertently sliding about a user's torso. Being a training device, a user would want the strap of Corder, Jr. to stay at the same level about their chest so that the same feel or movement would be achieved with each swing.

Regarding the limitation set forth in claim 3, the straps of Corder, Jr. can be fabric, a woven material, and thus considered by Examiner to be webbing.

Regarding the limitation set forth in claims 4 and 8, Corder, Jr., discloses that the straps are ideally elastic (col. 3 line 3), but also discloses that they may be made from fabric or other material (col. 3 line 7-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the straps from fabric rather than an elastic material as a matter of design choice.

Regarding claim 26, the second loop of the modified Corder, Jr. device is sized to couple or fit around an operator's wrist. The loop is shown by Corder, Jr. in Figure 4 to fit around a user's upper arm. Being adjustable, the loop would certainly also fit around a user's wrist.

3. Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. in view of Kristof as applied in paragraph 2 above, and further in view of Upshaw (US 5,938,548 A).

The modified Corder, Jr. device includes the claimed features except for the second strap comprising a resilient member affixed to an inner surface thereof. Upshaw, however, also discloses a training device with straps that encircle a user's arms and teaches that cushion pads (46,48) are secured to the arm straps. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a pads on the second straps of the modified Corder, Jr. device, as taught by Olsen, in order to make the strap more comfortable for a user to wear.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over the modified Corder, Jr. device which is capable of being used in the intended manner, i.e., the padding in the arm loops damping the vibration of a tool held therein. There is no structure in the modified Corder, Jr. device that would prohibit such functional intended use (see MPEP 2111).

4. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. in view of Kristof as applied in paragraph 2 above, and further in view of Colin (5,110,023) and Murphy et al. (US2004/0084489).

Corder, Jr. discloses the claimed invention except for the buckle including first and second apertures, with the first strap passing through the first aperture, and the second aperture captured within a bight in the second end of the second strap to form

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the second loop. Colin and Murphey et al., however, teach that it is old and well known in the art to use a buckle with two apertures when passing straps there through to form one or more loops. Murphey et al. discloses a buckle (29) with two apertures for passing the ends of strap (18) through to form a single loop (figure 2), with the strap passing through a first aperture (19, figure 2) and the second aperture captured within a bight in the second end of the strap (23, figure 2). Colin discloses a buckle (4) with two apertures for passing the ends of strap (2) through to form two distinct loops (12&16), with the strap passing through the first aperture (24), and the second aperture captured within a bight in the second end of the strap (10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the D-rings of Corder, Jr. with well known, art equivalent buckles, as taught by Colin and Murphey et al., passing one strap end through the first buckle aperture, and capturing the second aperture within a bight of the second end of a strap in order to form two distinct loops.

### ***Response to Arguments***

5. Applicant's remarks filed 11/16/06 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
2/20/07

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER